

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

United States of America)	
)	Cr. No. 0:03-1067
vs.)	
)	
Darrel Jones,)	O R D E R
)	
Defendant.)	
)	

On March 3, 2004, Defendant Darrel Jones pleaded guilty to conspiracy to possess with the intent to distribute and to distribute 50 grams or more of cocaine base, in violation of 21 U.S.C. § 846. On July 15, 2004, Defendant was sentenced to incarceration for a term of 262 months. Judgment was entered on July 19, 2004.

This matter is before the court on Defendant's pro se motion to compel the government to file a motion pursuant to Fed. R. Crim. P. 35(b), which motion was filed on November 21, 2016. Defendant asserts that he has rendered unrewarded substantial assistance. The government filed a response on December 5, 2016, wherein it noted that Defendant has provided information, but asserted that the information provided by Defendant did not rise to the level of substantial assistance.

Fed. R. Crim. P. 35 gives the government the power, but not the duty, to file a motion when a defendant has substantially assisted. Wade v. United States, 504 U.S. 181, 185 (1992). A federal prosecutor's discretion when exercising that power is subject to constitutional limitations. Id. Federal district courts have authority to review a prosecutor's refusal to file a substantial-assistance motion and to grant a remedy if they find that the refusal was based on an unconstitutional motive. Id. at 185-86. Moreover, a defendant may be entitled to relief only if the prosecutor's refusal to move was not rationally related to any legitimate government end. Id. at 186. A defendant must

make a “substantial threshold showing” that the government’s refusal to file a Rule 35 motion was the consequence of a suspect reason. Id. A claim that a defendant merely provided substantial assistance will not entitle a defendant to a remedy or even to discovery or an evidentiary hearing. Id.

Defendant has failed to show that the government’s failure to file a Rule 35 motion is the consequence of a suspect reason. Accordingly, Defendant’s motion to compel (ECF No. 124) is **denied**, without prejudice.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Senior United States District Judge

Columbia, South Carolina

December 29, 2016.